

# PUBLIC SCHOOL OPEN ENROLLMENT TECHNICAL ASSISTANCE WORKSHOPS

## **Undue Financial Burden**

s. 118.51 (12) (b), Wis. Stats.

Wisconsin Department of Public Instruction

January, 1999

If the costs of the special education program or services required in the IEP for a child with a disability whose parent has submitted an open enrollment application, as proposed to be implemented by the nonresident school district, would impose upon the child's resident school district ...

*... an undue financial burden in light of the resident school district's total economic circumstances, including*

- ✓ *its revenue limit*
- ✓ *its ability to pay tuition costs for the pupil and*
- ✓ *the per pupil special education costs for children with disabilities continuing to be served by the resident school district ...*

... the child's resident school board may notify the child's parent and the nonresident school board by the first Friday following the first Monday in April [April 7,2000] that the pupil may not attend the nonresident school district to which the child has applied.

# Key Elements

- ✓ costs of the special education program and services required in the IEP
  - must make an individual determination for each child based on the cost of implementing the student's IEP

# Key Elements

- ✓ as proposed to be implemented by the nonresident school district
  - may not deny simply because the nonresident school district would implement the IEP differently or because program can be provided in resident school district
  - must have a detailed estimate of tuition costs from the nonresident school district

# Key Elements

- ✓ would impose an *undue* financial burden
  - *while it may be argued that any payment of tuition would impose a financial burden, the district must examine its economic circumstances and determine whether that burden is “undue”*

# Key Assumptions

- ✓ The statute clearly intends that students who needs special education are eligible to participate in open enrollment--a resident district may not deny a student the ability to transfer simply because the district must pay tuition for the student



# Key Assumptions

- ✓ The department's interpretation is that undue financial burden is a subjective determination not able to be defined by a simple formula--it is unique to the circumstances of each school district. However, it is possible to establish a uniform method of determining the net cost to the district and to define certain basic elements for examining the effect on the district's total economic circumstances.

# “Test” is on Appeal

- ✓ The school board’s decision is not reviewed by the Department unless the parent appeals. In reviewing the appeal, the Department will determine:

- Whether the decision was arbitrary
  - must have a process to consider effect of tuition cost on district.
  - while there is no process defined in statute or rule for determining undue financial burden, a school district that seriously follows the process described in this presentation would be very unlikely to have its decision found to be arbitrary.

- Whether the decision was reasonable
  - result of process must be consistent, fair and and reasonable.
  - although there is no magic number which defines undue financial burden, it is reasonable to conclude that the smaller the “net open enrollment tuition cost” for the district, the more compelling the district’s argument needs to be for the Department to uphold the school board’s decision on appeal.

# Emphasis on Process

- ✓ Calculate the net open enrollment tuition cost
- ✓ Review the effect on the special education programs in the resident school district
- ✓ Review the effect on the district's total economic circumstances, including:
  - its revenue limit and
  - its ability to pay the tuition costs
- ✓ Based on the above calculation and review, determine whether the cost is an undue financial burden

# Calculate Net Open Enrollment Tuition Cost

$$\begin{aligned} & \text{Regular education tuition (annual)} \\ + & \text{Special education tuition (annual)} \\ = & \textit{Total Tuition Cost} \\ - & \text{Savings (use transfer of service calculation)} \\ - & \text{Regular education tuition transfer amount} \\ & (\$4,551) \\ - & \text{Categorical aid reimbursement for eligible} \\ & \text{special education costs} \\ = & \textbf{Net Open Enrollment Tuition Cost} \end{aligned}$$

- ✓ Calculate the ratio of the net open enrollment tuition cost to the resident school district's shared cost/member.
- ✓ *Again, it is reasonable to conclude that the smaller the ratio, the more compelling the argument that the school district would need to make.*

# Review the Effect on Special Education Programs

- ✓ Per pupil cost for the special education program/services in which the student is enrolled
  - Current
  - If transfer occurs
- ✓ *Is there a significant increase in the per pupil cost of the special education program as a result of the student leaving?*



- ✓ Total budgeted special education expenditures for the current year
- ✓ Total budgeted instructional expenditures for the current year
  
- ✓ *What is the district's ratio of special education expenditures to total instructional expenditures?*

- ✓ Pupil/teacher ratio of the special education program/services in which the student is enrolled
- ✓ Optimal pupil/teacher ratio for the special education program/services, as determined by the school district
- ✓ *Is the current pupil teacher ratio within the range of the optimal pupil/teacher ratio of the school district? Would the student's transfer have a negative, positive or no effect on the pupil/teacher ratio compared to the optimal pupil/teacher ratio?*

# Review the Effect on Total Economic Circumstances

- ✓ Revenue Limit

- ✓ Ability to Pay

- ✓ Revenue limit membership for current and preceding 2 years
- ✓ Revenue per member for current and preceding 2 years
- ✓ *Are district enrollments increasing so as to provide more revenue for the district? Increasing so quickly that construction will be necessary? Decreasing so that revenue is decreased? Flat?*

- ✓ Total allowable levy for the current and preceding two years
- ✓ Total levy for the current and preceding two years
- ✓ *Does the district have flexibility to levy more under the revenue limits?*

- ✓ General fund balance for the current and preceding two years.
- ✓ *Does the district have a relatively large fund balance? A relatively small fund balance? Has the fund balance been growing? Shrinking?*

- ✓ Total instructional expenditures for the current and preceding two years.
- ✓ Total revenues and total expenditures for the current and preceding two years.
- ✓ *What are the district's instructional expenditures compared to total expenditures? Does the district take in more or less revenues than it expends?*

- ✓ What is the school district's equalized value per member?
- ✓ *Does the school district's tax base indicate a greater or lesser ability to pay the special education costs?*



- ✓ Results of any referenda to exceed the revenue limits for recurring purposes in the current and preceding two years.
- ✓ *Is the district able to turn to its taxpayers to exceed the revenue limits when appropriate?*

- ✓ Review any other factors that the school district believes is relevant to making the decision about whether the net open enrollment tuition cost imposes an undue financial burden.

# Determine Whether the Cost is An Undue Financial Burden

- ✓ Based on the previous calculation and review of the district's economic factors and any other relevant factors, determine whether the payment of the net open enrollment tuition cost would impose an undue financial burden.
- ✓ *There is no “magic” number or formula and no piece of data can be automatically assumed to be either positive or negative to an argument of undue financial burden. **The school board must review the data and make a determination.** If the decision is appealed, the department must review the determination based on the information the district provides.*

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